

Providing Care in Lincolnshire,
The present and the future

Crossroads or Cliff Edge?

Presentation by Melanie Weatherley
Chair Lincolnshire Care Association



Social Care in Lincolnshire - a few statistics

Adults in Residential Care

	Homes	Residents
Care Home with Nursing	81	3634
Care Home	213	4682

Other CQC Registered Services:

Domiciliary Care

Community Supported Living

CQC Ratings

Outstanding	8
Good	270
Requires Improvement	58
Inadequate	7

Concerns and Opportunities

Concerns

- ▶ Increasing Expectations
 - ▶ Service Users
 - ▶ Families
 - ▶ Public Sector Commissioners
 - ▶ Regulators
- ▶ Decreasing State Funding
- ▶ Integration
- ▶ Uncertainty
 - ▶ Allied
 - ▶ Four Seasons

Opportunities

- ▶ Increasing Expectations
 - ▶ Service Users
 - ▶ Families
 - ▶ Public Sector Commissioners
 - ▶ Regulators
- ▶ Increasing Self-funder Market
- ▶ Integration
- ▶ New Ways of Working

The Future?

- ▶ Integration
- ▶ NHS Long term plan
- ▶ Green Paper

Or:

- ▶ Customer focused sector?

Lincolnshire Care Association LinCA

- ▶ Trade Association
 - ▶ representing the views of care providers across the sector
- ▶ Supporting providers and staff
- ▶ Working with other parts of the system
- ▶ Lobbying locally, regionally and nationally.

Any questions?



Further information:

Melanie Weatherley
Chair
Lincolnshire Care Association

Tel: 01522 580173
www.linca.org.uk



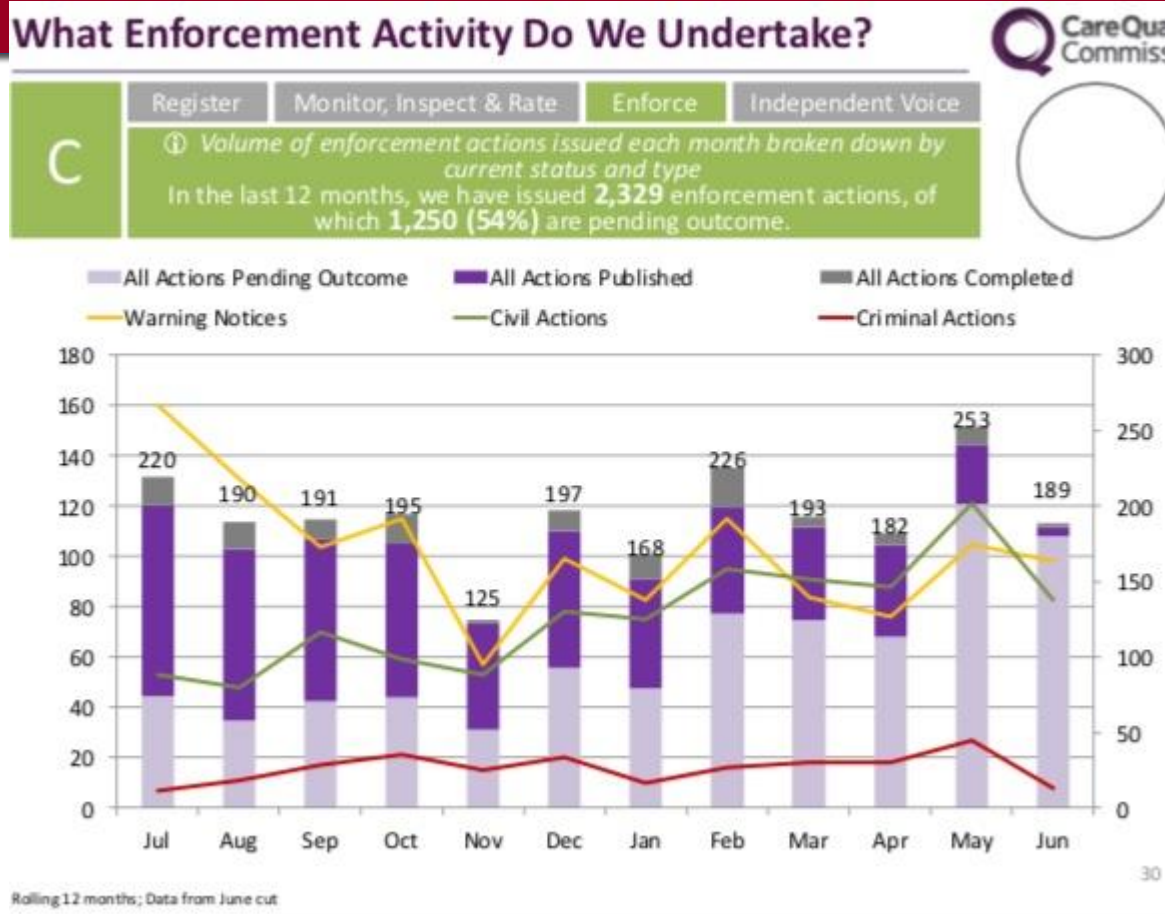


Andy Kerrigan – Associate Solicitor

Care & Compliance

1. Have the CQC just signalled a new tougher approach and should you be concerned?
2. Deprivation of Liberty reforms
3. A case study on factual accuracy responses and a look at possible reforms.

Regulation – Carrot or Stick?



https://www.cqc.org.uk/sites/default/files/CM091805_Item5_Q1Performance_Report.pdf

Regulation – Carrot or Stick?

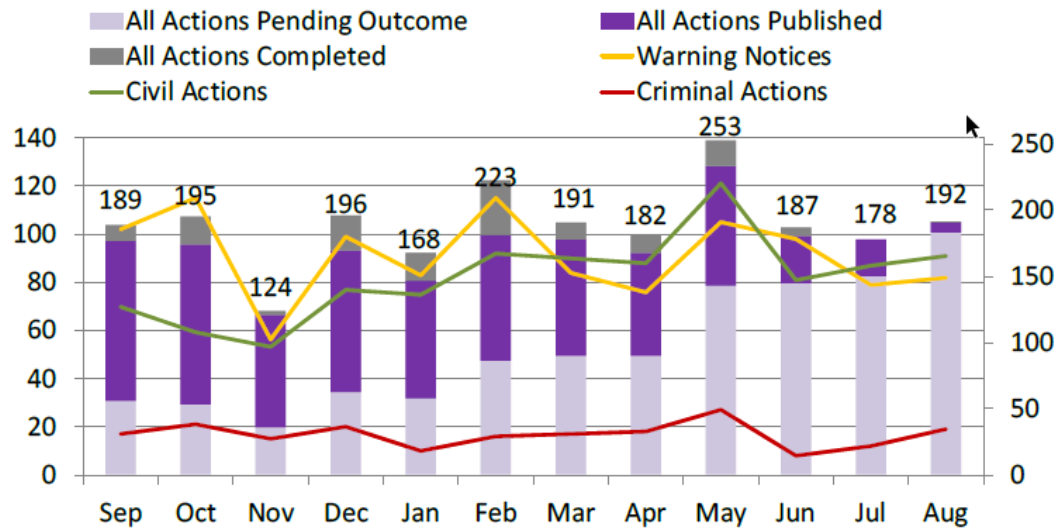
What Enforcement Activity Do We Undertake?



C

Register Monitor, Inspect & Rate **Enforce** Independent Voice

① Volume of enforcement actions issued each month broken down by current status and type
In the last 12 months, we have issued **2,278** enforcement actions, of which **1,153 (51%)** are pending outcome.

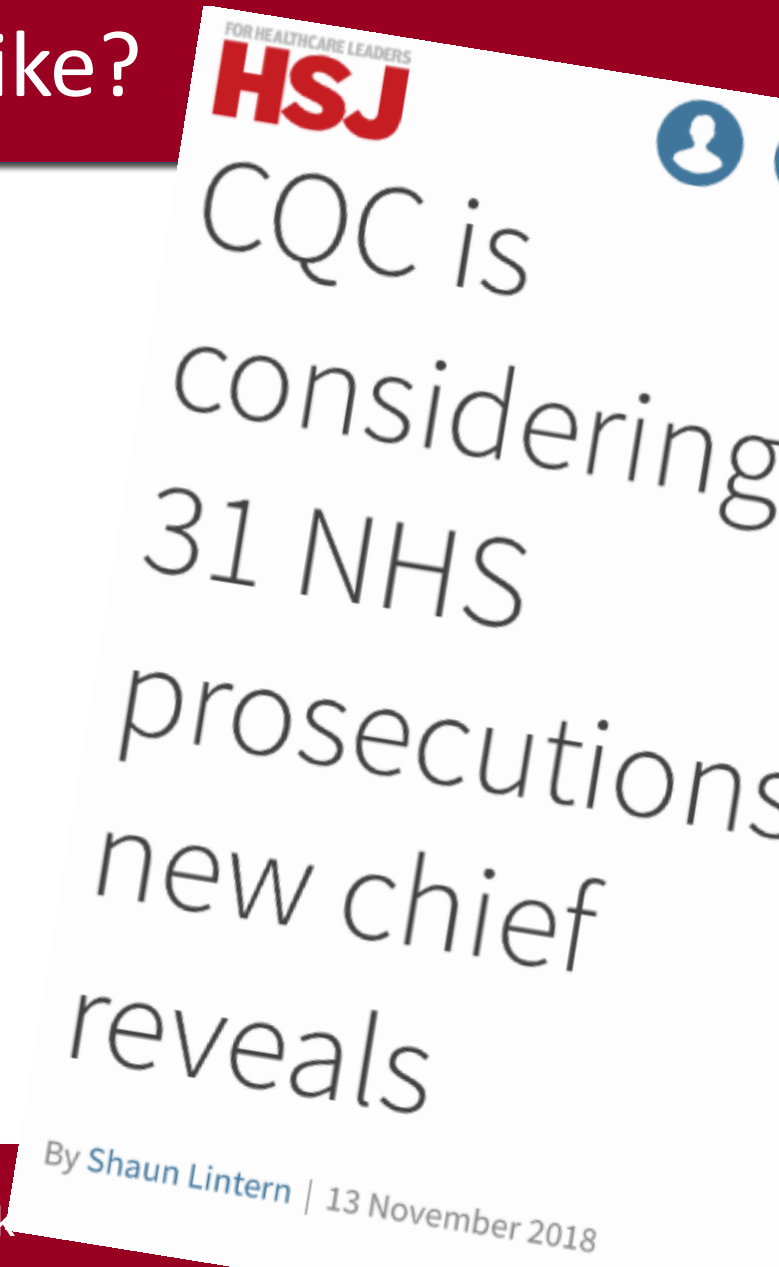
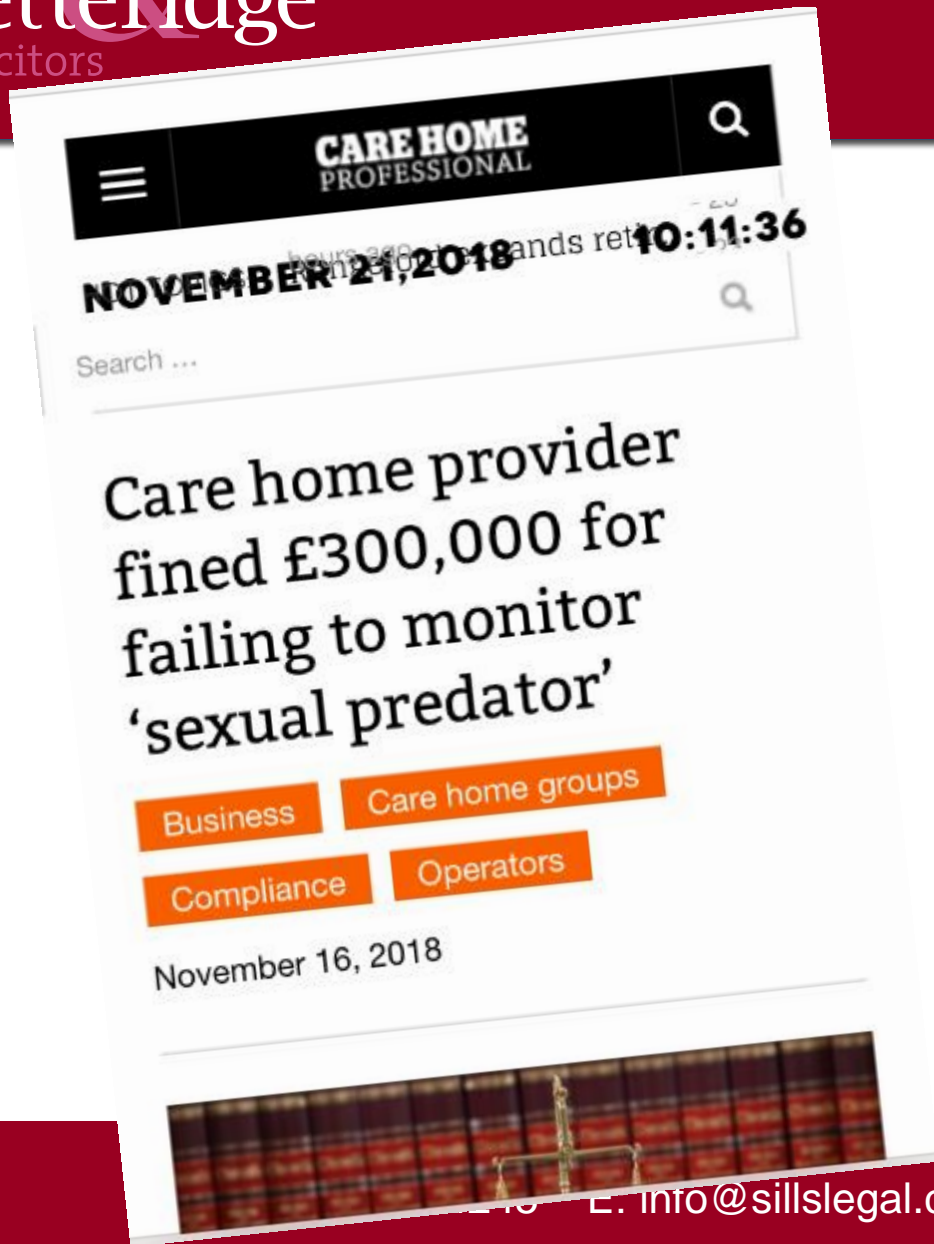


Rolling 12 months; Data from August cut

27

https://www.cqc.org.uk/sites/default/files/CM091805_Item5_Q1Performance_Report.pdf

What do CQC prosecutions look like?



Search whole website | Keywords or service name | Search

Home > prosecution

prosecution
Hillgreen Care Limited fined £300,000 - for not monitoring 'sexual predator'
A care home provider has been fined £300,000 for allowing a man in its care with a history of sexual assaults the freedom to prey on vulnerable people.
▶ Read more

Nursing home prosecuted by CQC over serious burns injury
A care provider that failed in its duty to provide safe care and treatment has today (Thursday 19 October 2017) been ordered to pay £59,570.58 in fines and costs by Camberwell Magistrates' Court.
District Judge Andrew Sweet issued a £45,000 fine and also ordered the payment of £14,570.58 prosecution costs and a £150 victim surcharge.
The Care Quality Commission (CQC) brought the prosecution following an incident when a 72 year old woman was burned after sitting on a portable heater at Elmwood Nursing Home in Croydon.
▶ Read more

CQC prosecutes Southern Health after patient is injured falling from hospital roof
Southern Health NHS Foundation Trust has appeared in court today (Thursday) to enter a plea to the charge that it failed to provide safe care and treatment to people in its care.
The Care Quality Commission brought the prosecution following an incident at Melbury Lodge, a psychiatric unit in Winchester that cares for people who need to be admitted to hospital as a result of severe mental health problems.
▶ Read more

York care home owner prosecuted

Legionella Control International

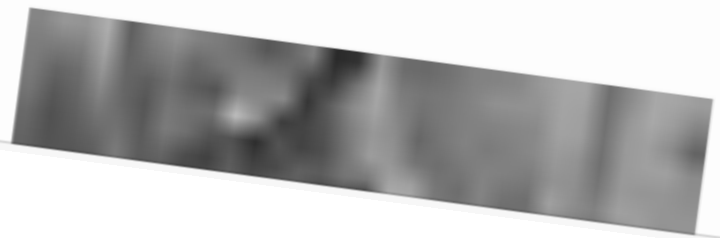
BUPA care home fined £3m after Legionnaires death



kriesi

5 months ago

BUPA care home fined £3m after Legionnaires' disease death



Mental Capacity (Amendment) Bill

1. Original wording – save £200m per year, Assessment and Consultation falls onto care home managers.
2. Concerns raised LA's imply rubber stamp decisions of care home managers and lack of knowledge of alternatives
3. Fears re manager having lack of training, capacity and conflicts of interest.

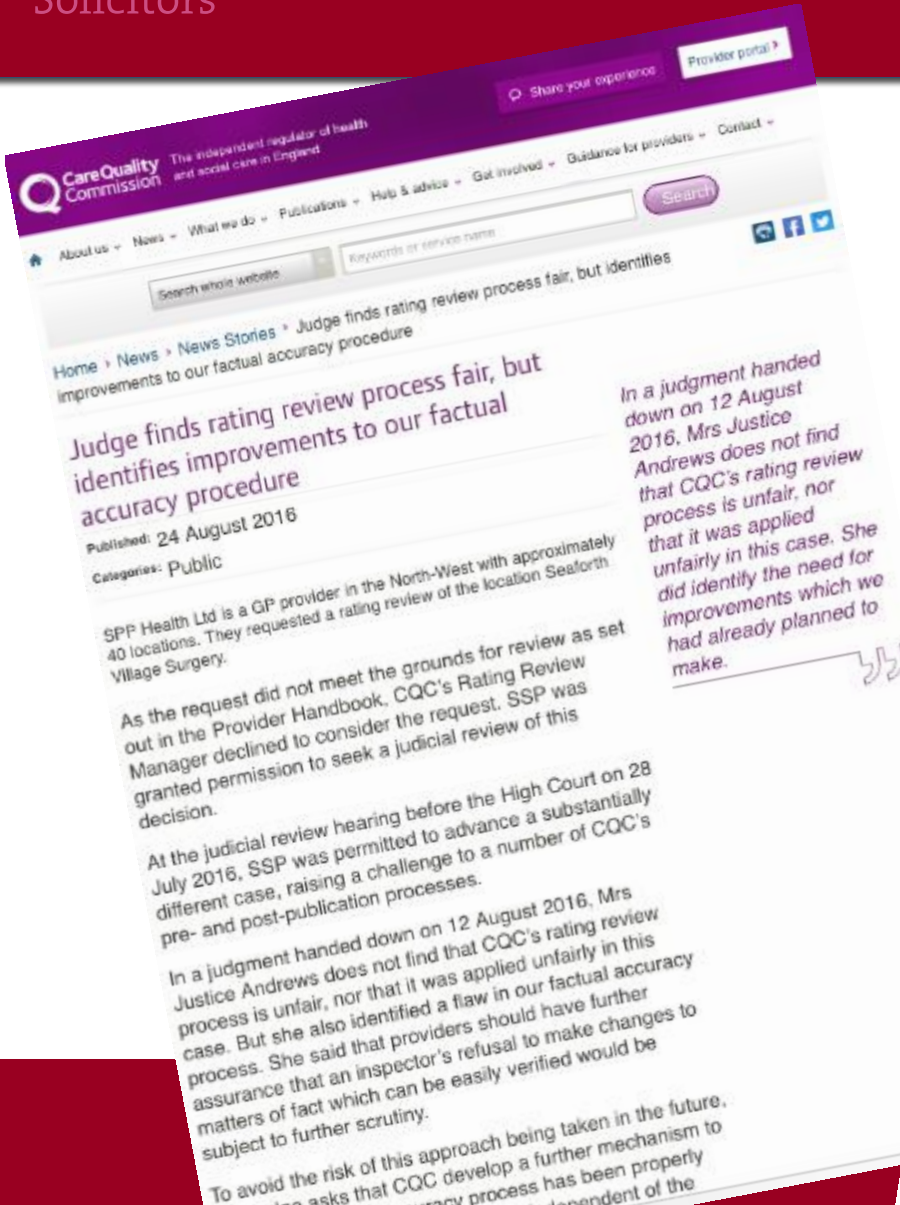
The Law Society said

As it stands, the Law Society does not believe the Bill has sufficient safeguards and is not fit for purpose in its current form. It requires serious re-consideration and extensive revision.

Lords proposed amendments 21 November:

1. Only responsible bodies (LA's) can arrange pre-authorisation review.
2. Responsible bodies can remove the care home manager from the process at any stage.
3. The care home manager will bring together the information, evidence and assessments needed for the responsible body to make a decision on whether to authorise the liberty protection safeguard.

SSP Health Ltd v CQC



In R (SSP Health Ltd) v Care Quality Commission [2016] EWHC 2086 (Admin) the Care Quality Commission received a bloody nose from Mrs Justice Andrews.

The applicant (SSPH) in this case was a GP service provider. Following a poor rating from the Care Quality Commission (CQC), it launched a challenge.

Under the Health and Social Care Act 2008 (the Act) there is no right of appeal against an assessment or rating made by the (CQC). There is also no provision in the Act itself or in the corresponding regulations for a review of assessments or ratings awarded by the CQC. The CQC

Restriction on factual accuracy feedback

To make our form simpler and mandatory (the only way we will accept provider information).

To develop specific provider guidance with clearer instructions and examples.

To ask submissions to identify where and how the information supports the point (rather than sending us lots of material).

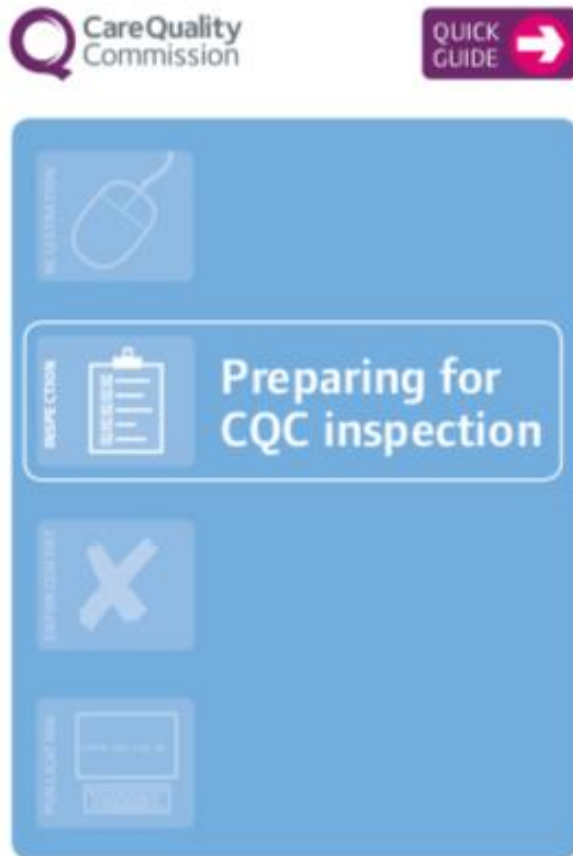
To word limit each point that is being made on the form, but not the number of points.

To stick **strictly to the 10 days' time limit** for submissions.

To allow discretion to the time limit but only in **exceptional** circumstances.

To develop a digital solution (this is a longer-term aim).

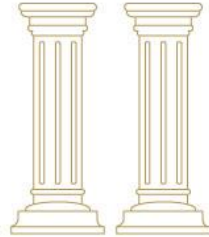
Positive action



You may want to consider:

- ✓ Making staff aware of the methods we use to gather evidence.
- ✓ Making it clear that we don't expect all staff to have the same level of knowledge and understanding.
- ✓ How you will be ready to produce documentation during the visit. If there is a valid reason why you can't locate documents during the visit we will usually allow you 48 hours to produce them.
- ✓ Including a contents page at the front of each care plan so that inspectors and your staff know what they can expect to find and where.
- ✓ Maintaining a folder that directs staff to where they can find information quickly, e.g. health and safety and training records.
- ✓ Keeping your records up to date, particularly training records.

Thank you for listening



TOWER HOUSE

WEALTH MANAGEMENT

Care Requiring Self Funding

28th November 2018

Robin Tindale FPFS

Chartered Financial Planner

Managing Director



Tower House Wealth Management

- II Partner Practice of St. James's Place Wealth Management
- II Providing Guaranteed* regulated financial planning advice and access to a network of care advisers
- II Creating & Protecting Wealth, Tax efficiently

*St. James's Place guarantees the suitability of the advice given by members of the St. James's Place Partnership when recommending any of the wealth management products and services available from companies in the group.



Robin Tindale FPFS

- II Robin is a Chartered Financial Planner
- II With over 25 years of experience
- II a SOLLA Accredited Adviser
- II Managing Director at Tower House
Wealth Management



The Society of Later Life Advisers (SOLLA)

The Society promotes comprehensive professional financial advice for older people and their family. **SOLLA** was formed in recognition of the importance of finding the right adviser at the right time; Qualified advisers with experience in providing financial advice when it comes to later life financial planning.



SOLLA
Society of Later
Life Advisers

Why use a SOLLA member?

All our full members:

- are specialists in advising older people on financial matters
- hold the Later Life Adviser Accreditation (LLAA) which is independently audited and endorsed by the Government Body, the Financial Services Skills and Legal Partnership Council (FSLP)
- must adhere to a strict Code of Practice

Members can advise on:

- Pension income options and annuities
- Funding for Care Home fees
- Funding for care in your own home
- Releasing money from your home
- Savings and investing
- Tax matters and Estate Planning



Our Proposition

- II Providing clients the information to make informed decisions
- II Reviews include checking up to date Will and Lasting Power of Attorney are in place*
- II Ensuring relevant state benefits are being received and that local authority assessments have taken place
- II Cash Flow Modelling to demonstrate the various methods of funding for care.

*Wills and Lasting Powers of Attorney involve the referral to a service that is separate and distinct to those offered by St. James's Place.



Who can we help?

Client Categories

- II **Green** – The client has 5+ years of care fees available and they hold various assets. Planning around most effective way to pay care fees, maximise the estate for the family, health check covering Wills, POA, State Benefits , Assessments, referrals to solicitors and other professionals.
- II **Amber** – The client has between 18 months and 5 years worth of care fees, assets generally consist of a main residence. High likelihood that residence will be used to fund care. Planning most effective and long term solution for paying care, maximise the estate where possible, health check covering Wills, POA, State Benefits , Assessments, referrals to solicitors and other professionals.
- II **Red** - The client has no assets and under 18 months worth of funds available to pay for care, unable to assist with planning, will carry out a care health check covering Wills, POA, State Benefits , Assessments, referrals to solicitors and other professionals.



The Basics

- II Establish Care Costs
- II Ascertain all sources of income
- II Calculate any shortfall
- II Recommend most suitable option to bridge the gap



Options for paying care keeping the home

Retaining property

- Deferred payment arrangement
- Rent out property
- Equity release.



Options on selling the home

Deplete your cash

- II Limited timescales – when its gone its gone !
- II Interest rate risk and inflation risk over the longer term
- II No residual estate for the family
- II Move on to local authority rates – Expensive to maintain
- II Move care home – Bad Press !
- II May move financial responsibility onto the family



Options on selling the home cont.

Investing for Income / Growth

- II Suitable for most green and some amber clients
- II Attempts to keep capital intact for the family
- II Potential for higher returns than cash
- II Aims to keep pace/ beat inflation
- II Provide an income to cover shortfalls between total income and care fees
- II Potential to extend funding over longer term
- II Avoids local authority rates – improved cash flow



Options on selling the home cont.

Immediate Needs Annuity

- II Our default recommendation for most clients
- II Guarantees to pay an income for the remainder of the individual's life
- II Used to cover the cost of care in a Residential / nursing home
- II Can be indexed to keep pace with increasing care costs
- II Payments are paid directly to the care provider so not classed as income and consequently paid tax free
- II Will not affect entitlement to Attendance Allowance or registered nursing care contributions
- II The annuity can be transferred to a different care provider
- II After the initial purchase remaining capital persevered for family



Hybrid Schemes

- II A hybrid scheme looks to mix an immediate needs annuity and some form of investment
- II It is suitable for green and some amber clients
- II It strikes a balance between guaranteeing the cost of care and trying to maximise the estate for the family
- II It can use the INA to make the shortfall smaller and more realistic enabling it to be covered by investment growth/income



Cash Flow Forecasting

- II What is it ?
- II It enables us to look at a clients income , assets and expenditure and visually show how much excess income or shortfalls they have
- II How can it help with long term care?
- II The program features specific “simulations” to show the effects that having to go into care would have on a persons cash flow.
- II It is personalised to fit each clients individual circumstances
- II It accounts for inflation, growth rates, interest rates
- II It can quantify shortfalls now and in the future



Cash Flow Forecasting

Benefits to the client

- II Informed outlook for the future
- II Simulations enable us to show “what if?” and “worse case” scenarios
- II Interactive view of our advice
- II Manage affordability
- II Free of charge to our clients
- II Estate planning for the family



Cash Flow Forecasting

Benefits to Care Providers

- II Less clients will have shortfalls/completely deplete funds
- II Clients who purchase Immediate Needs Annuities can have full care costs covered for life
- II Avoids the need for local authority rates
- II Improved cash flow / Commercial viability
- II Professional Image
- II Holistic approach by ensuring clients have received advice regarding funding
- II No cost to the care provider for our services

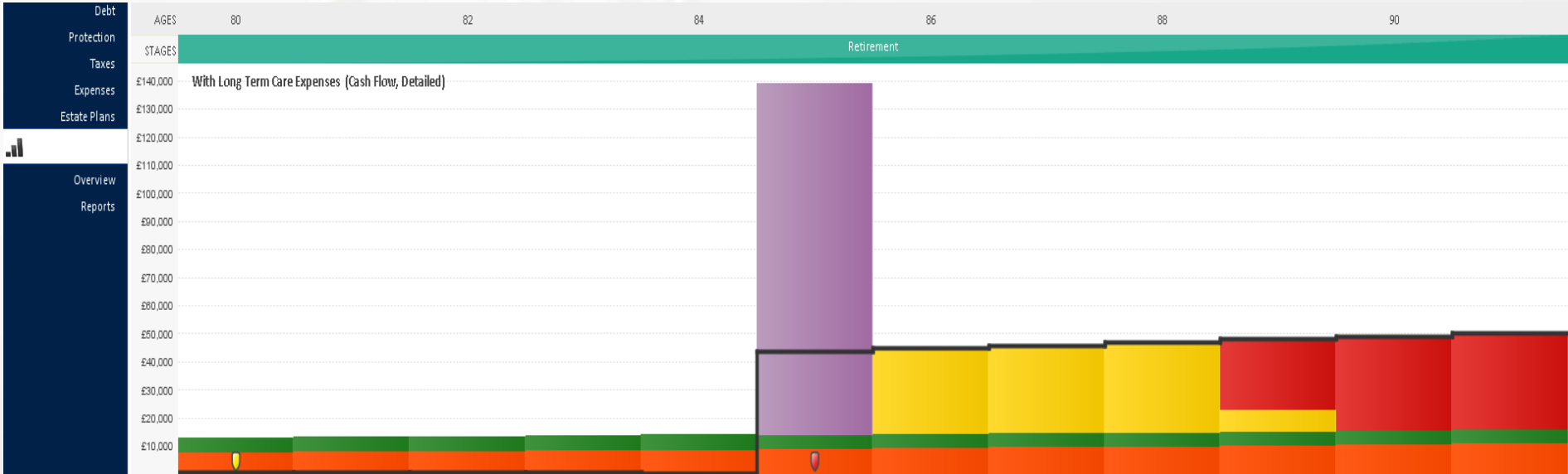


Case Study

- II John Smith
- II State pension of around £8,000 PA
- II Small Annuity provided by his previous employment at Walkers Ltd of £5,000 PA
- II Main Residence valued at £125,000
- II John requires care at age 85 for 7 years until his death at age 92
- II Care is provided at £800PW



John's Cash Flow



- Debt
- Protection
- Taxes
- Expenses
- Estate Plans

- Overview
- Reports

- Single Chart
- Dual Chart
- Compare Plans
- Simulations**
- Loss Capacity
- Real Money
- Edit Time
- Historic
- Performance
- What If

First, select a simulation

Long Term Care

Second, select a chart to view

Cash Flow

Detailed

Third, choose a person

- Primary only
- Spouse only
- Both

Fourth, enter the terms and show the results on the chart

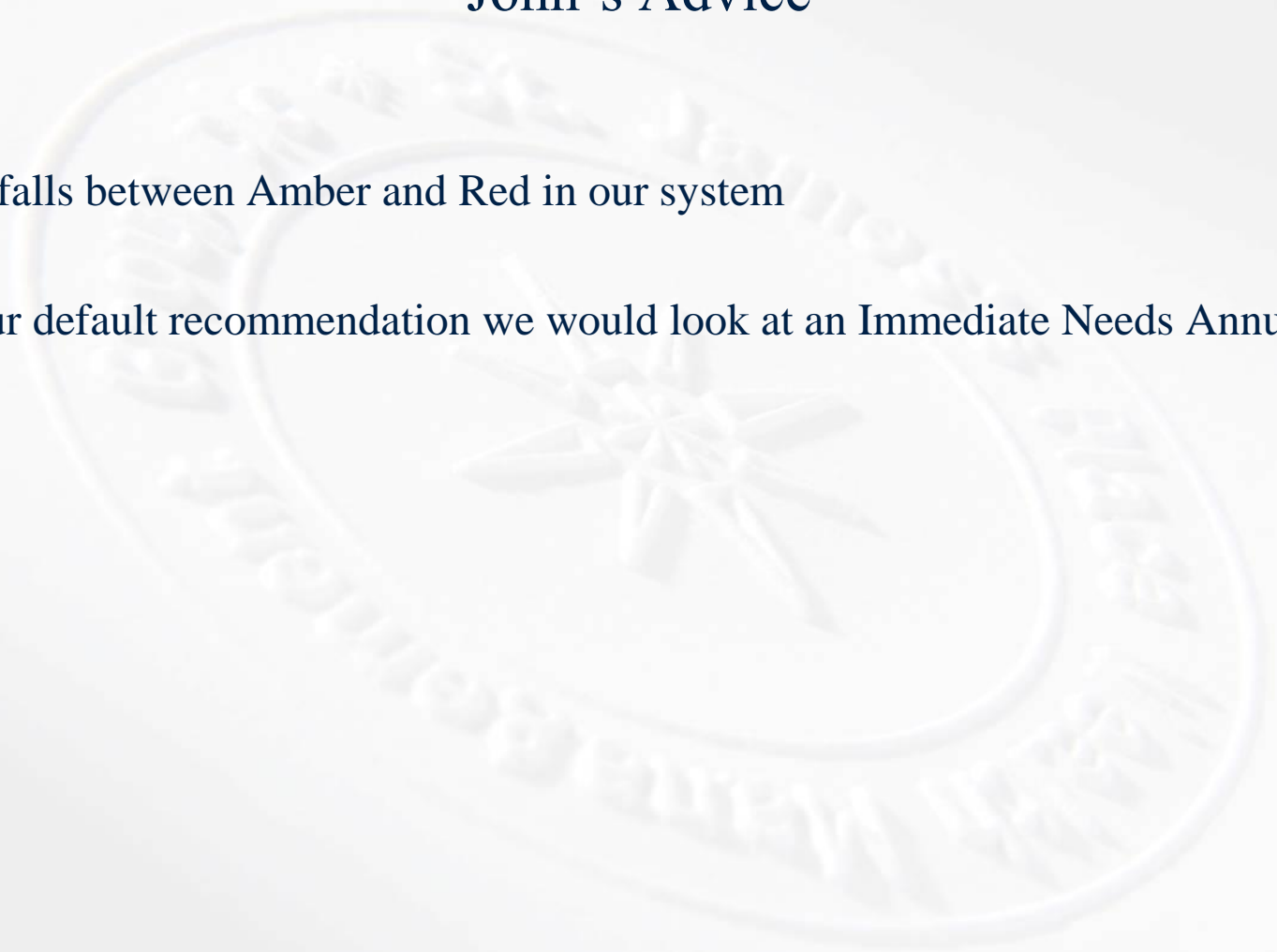
	Daily Expense	Age	Duration (yrs)	Days per year	Expenses Inflation Rate
John	105.20	85	7	365	2.5 %
Sec Name	200	70	3	20	

Show Results



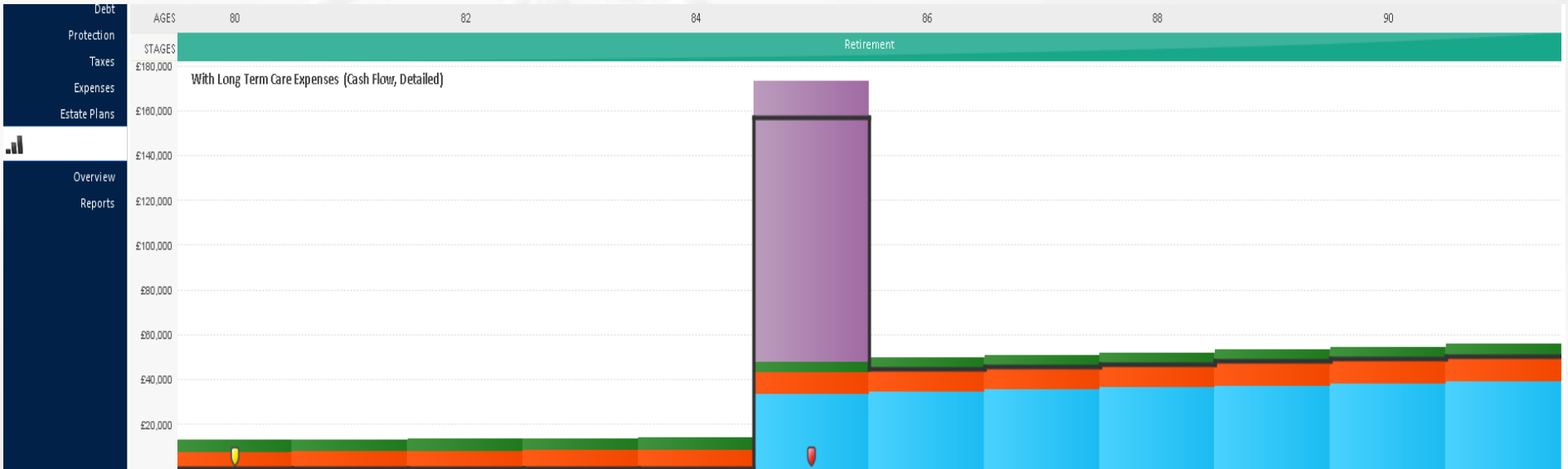
John's Advice

- II John falls between Amber and Red in our system
- II As our default recommendation we would look at an Immediate Needs Annuity





John's Cash flow INA



Single Chart Dual Chart Compare Plans **Simulations** Loss Capacity Real Money Edit Time Historic Performance What If

First, select a simulation

Long Term Care

Second, select a chart to view

Cash Flow

Detailed

Third, choose a person

- Primary only
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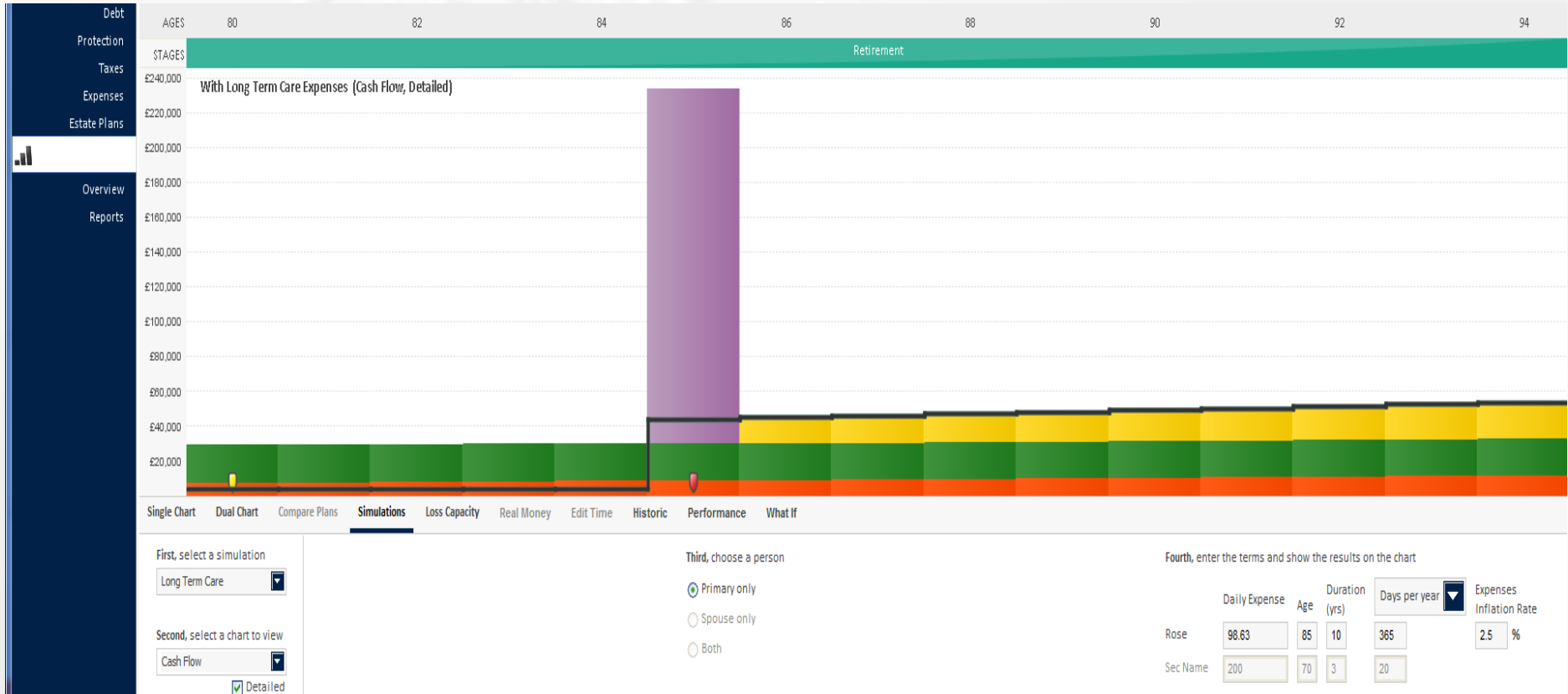


Case Study 2

- II Rose Smith
- II £8,000 from her state pension
- II £21,000 from her occupational pension
- II Her main residence is valued at £180,000
- II She requires care from age 85 until age 95
- II Care is provided at £750 PW
- II She has two sons who she would like to provide for on death, she currently gifts all her excess income to them each year



Rose's Cash Flow



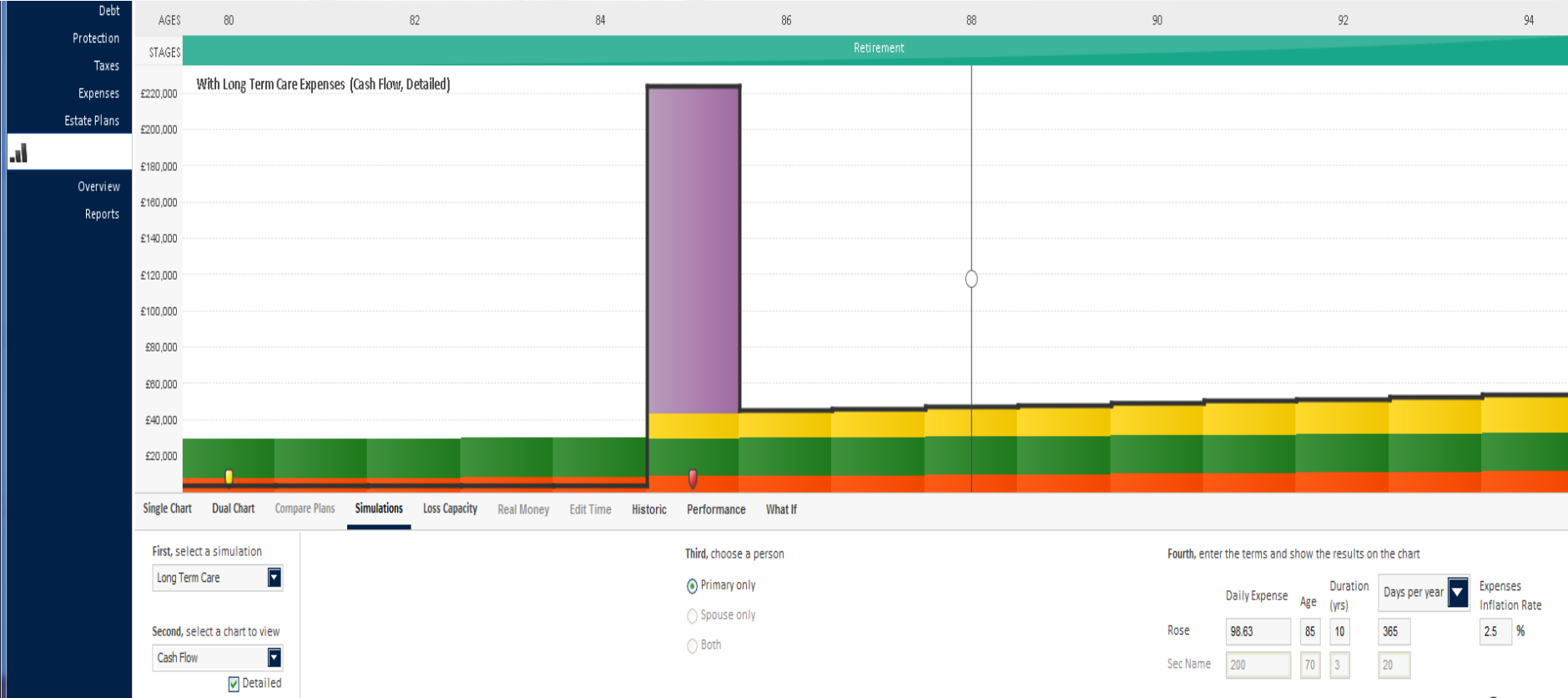


Rose's Estate

- II Rose's home would be sold for £180,000 and paid into her bank
- II The cash would fund the shortfall in her care each year (Care cost indexing at 2.5%)
- II Her remaining estate on death would be £58,468.
- II Each son would receive £29,234



Rose's Cash Flow with Unit Trust





Rose's Estate

- II Rose would fall into the green client category, as she has a small shortfall and wishes to preserve her estate we would look to invest for income.
- II Rose's home would be liquidated for £180,000 and paid into a Unit Trust
- II The Unit Trust would fund the shortfall in her care each year (Care cost indexing at 2.5%)
- II The assumed rate of growth is 4%
- II This would mean that the capital would still be eroded but much more slowly
- II Her remaining estate on death would be £122,844.
- II Each son would receive £61,422



Rose Summary

- II Care costs would be fully covered in both situations
- II However in situation 2 the family are left in a much better position
- II Rose wanted to provide for her sons and has been able to do so
- II The advice in situation 2 would be paid for by the purchase of the Unit Trust and at no cost to the care provider
- II The estate was left over £60,00 better off

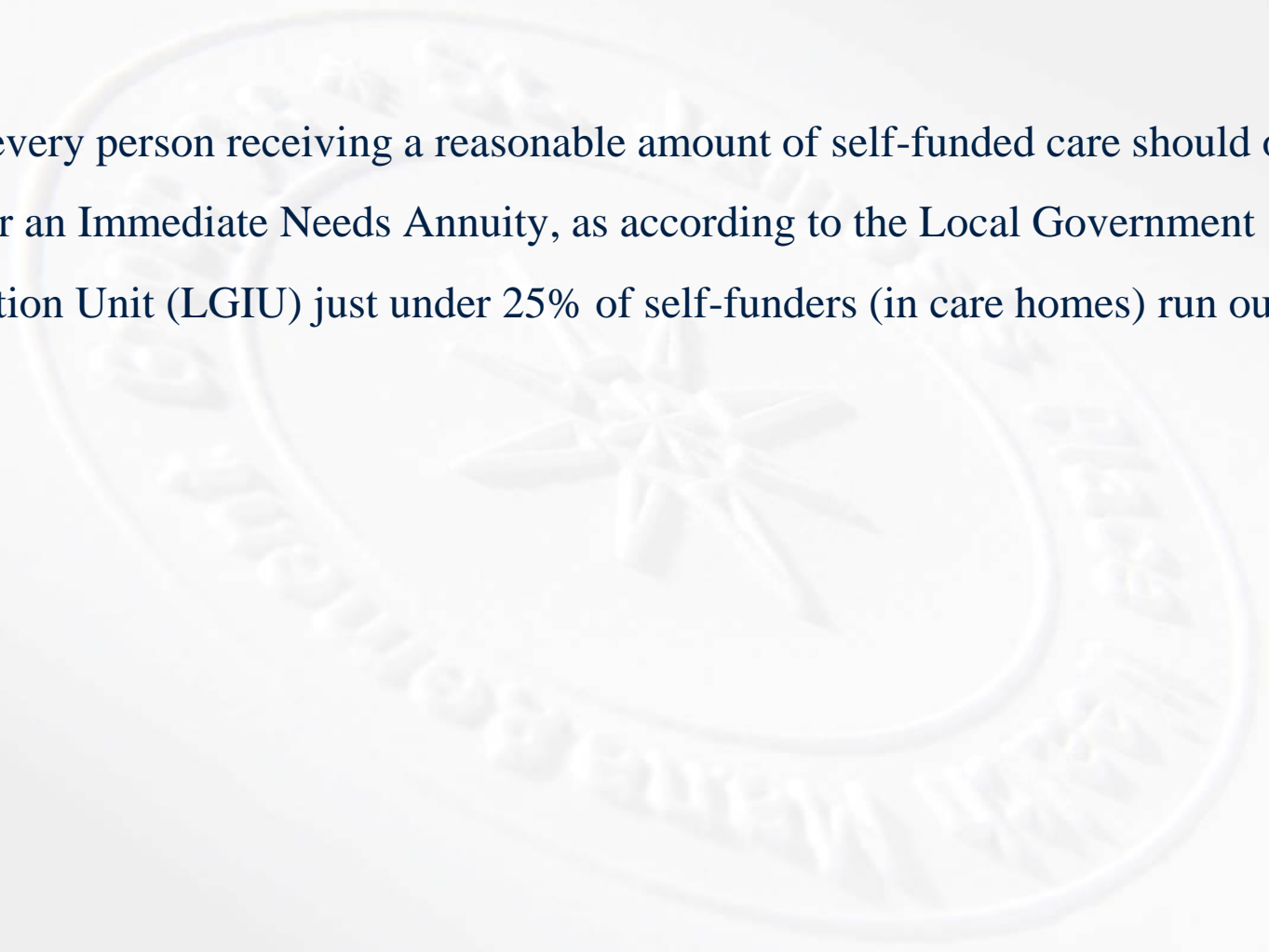


Our Service Costs

- II Our initial meetings are provided on a zero cost basis
- II If the client does not wish to proceed they won't pay
- II We are happy to see clients at home , in our office or at your office
- II We provide specific approved Long term care funding material to you
- II All our charges are borne from the products meaning that unless we have a product based solution there is no cost
- II Each client receives a tailored illustration of our advice charges
- II We are not time costed and do not charge for cash flow forecasting
- II There is no cost to the care provider for our services



Ideally every person receiving a reasonable amount of self-funded care should obtain terms for an Immediate Needs Annuity, as according to the Local Government Information Unit (LGIU) just under 25% of self-funders (in care homes) run out of money.





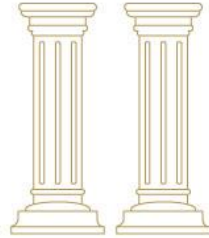
According to industry quote volumes via the common application process, in 2017 only about 6% of the estimated 57,000 entering a care home on a self-funded basis every year obtain terms for an Immediate Needs Annuity (this does not include those receiving domiciliary care)!



There are options to cover all types of clients. The capital protected option can provide Capital Protection up to 75% of the purchase price for clients concerned about early death. Or there is a deferred option (deferral for benefit to commence of between 1 and 5 years) to cover the longevity risk on a lower premium basis.



ST. JAMES'S PLACE
WEALTH MANAGEMENT



TOWER HOUSE

WEALTH MANAGEMENT

Care Requiring Self Funding

28th November 2018

Robin Tindale FPFS

Chartered Financial Planner

Managing Director

Working time, wages and whistleblowing

Key issues in the care sector

- Employee and worker status
- Working time under the Working Time Regulations 1998
- Time work under the National Minimum Wage Regulations 2015
- Whistleblowing – overview and update
- Any questions ...

Types of worker:

- Employee
- Worker
- Self-employed

Two issues:

- Defining the boundaries
- Inconsistency in use of terms

Defining the boundaries

- s.230 Employment Rights Act

An employee:

*an individual who has entered into or works under (or, where the employment has ceased, worked under) a **a contract of service or apprenticeship**, whether express or implied, and (if it is express) whether oral or in writing.*

A worker:

an individual who has entered into or works under (or, where the employment has ceased, worked under):

- (a) **a contract of employment**, or*
- (b) **any other contract**, whether express or implied and (if it is express) whether oral or in writing, **whereby the individual undertakes to do or perform personally** any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.*

Employee status

- *Autoclenz Ltd v Belcher 2011 SC*
 - Elements to address are **control, risk and integration**
 - What is written in the contract cannot override the **true state of affairs**

Worker status

- *Express and Echo Publications Ltd v Tanton 1999 CA*
 - An open-ended right of substitution is incompatible with employment and worker status
- *Byrne Brothers (Formwork) Ltd v Baird & others 2002 EAT*
 - A limited or occasional power of delegation is not inconsistent
- *Pimlico Plumbers v Smith 2017 CA and then 2018 SC*
 - A genuine contract excluding liability to offer work could be superseded by evidence of regular work being performed
 - Is the dominant purpose personal performance?

Inconsistency in use of terms

- Whistleblowing – s.43K ERA extends the definition of “worker”
- Equality Act 2010 – s.83(2) defines “employee” to include workers and others
- TUPE – reg.2(1) defines “employee” differently and arguably wider than the ERA definition
- HMRC uses a completely different set of rules: in Autoclenz Ltd v Belcher the revenue had already determined that the individuals were self employed

Working time under WTR is different to working time for purposes of NMWR

- WTR rights:
 - daily and weekly rest breaks
 - maximum 48 hour week
 - young worker rights
 - night worker rights
- Consequences of breach of WTR:
 - unlimited fine
 - improvement or prohibition notices from HSE or local authority inspectors
 - compensation for a detriment
 - automatic unfair dismissal of employees (no qualifying service)

- What is working time?
 - Any period of time during which the worker is:
 - working,
 - carrying out their duties, and
 - at the employer's disposal
 - Any period during which the worker is receiving "relevant training"
 - Any additional period which is agreed in a relevant agreement to be working time

Travel time

- *Federacion de Servicios Privados del sindicato Comisiones obreras v Tyco Integrated Security SL 2015*
 - Security company closed provincial offices and made workers travel to assignments – all travel was working time
- *Thorbjorn Selstad Thue v The Norwegian Government 2016*
 - Travel from home to assignments (despite having a normal place of work) still working time.

On call

- *SIMAP v Conselleria de Sanidad y Consume de la Generalidad Valenciana 1998*
 - Where a worker is required to be at their employer's place of business on call to undertake work when requested to do so, this counted as working time under the Directive, **even if asleep**
- *South Holland District Council v Stamp and others 2002 (EAT)*
 - wardens working for sheltered housing schemes, living at or near the sites for which they were responsible in accommodation provided by the employer, were not engaged in "working time" while on call (apart from time actually spent working) since they were able to remain at home

On call

- *MacCartney v Oversley House Management 2005 (EAT)*
 - Requirement to remain within a three-minute radius was working time
- *Truslove v Scottish Ambulance Service 2013 (EAT)*
 - Requirement to remain within a three-mile radius was working time
- *Ville de Nivelles v Matzak 2017 (Advocate General's Opinion) and 2018 (ECJ)*
 - it is the quality of time spent on stand-by duty is of overriding importance, not the precise degree of proximity to the place of work
 - at home but required to respond within 8 minutes was working time

Potentially relevant exceptions

- reg.21 "Special case" workers: certain night worker rules and rest break requirements do not apply in relation to a worker –
 - (c) where the worker's activities involve the need for continuity of service or production, as may be the case in relation to –*
 - (i) services relating to the reception, treatment or care provided by hospitals or similar establishment ...*

48 hour limit still applies

- Domestic servant exception?
- 48 hour opt out

48 hour opt out

- 7 days notice to terminate unless agreed otherwise (subject to maximum 3 months)
- Refusal to hire those indicating an unwillingness to work long hours or sign an opt-out is in principle permissible.
- Protection is in principle greater for those who, having signed an opt-out as a means of securing a job, then give notice terminating their opt-out, as can claim detriment or dismissal applies in such cases.
- However the exemption is likely to be narrowly construed by ECJ. Arguable that an opt out 'agreement' requires genuinely free consent of the worker. Acceptance of an offer of employment made on condition they sign an opt-out may not meet requirements.

Minimum wage

	National Living Wage (per hour) Age 25+	Standard adult rate (per hour) Age 21+	Development rate (per hour) Age 18-20	Young workers rate (per hour) Age 16-17	Apprentice rate (per hour)	Accommodation offset limit (maximum daily deduction from NMW)
1 April 2018 – 30 March 2019	£7.83	£7.38	£5.90	£4.20	£3.70	£7.00

Do not confuse National Living Wage with the (Real) Living Wage calculated by the Living Wage Foundation which is voluntary

Real Living Wage is currently £9.00 per hour outside London

- Enforcement by HMRC, measures include:
 - Service of notices of underpayment
 - Civil penalties
 - “Naming and shaming”
 - Recovery of underpayments through tribunals or civil courts
 - Criminal prosecution
- Claim can be brought by worker as a deduction from wages or breach of contract

Key differences between WTR and NMWR in relation to working time

- Travelling is treated as working time, unless the travelling is between:
 - the worker's home and their normal place or work
 - the worker's home and an assignment

Key differences between WTR and NMWR in relation to working time

- A worker who is not doing actual work is **treated as working** if they are required to be available for work at or near the workplace.
- Two exceptions:
 - time spent at home is excluded
 - only includes hours when the worker is awake for the purposes of working, ~~even~~ if a worker by arrangement sleeps at or near a place of work and the employer provides suitable facilities for sleeping

Royal Mencap Society v Tomlinson-Blake (2018) CA per Underhill LJ

- “The essence of the arrangement is that the employee is expected to sleep”
- Previous case law where "presence was a requirement" was doubted:
 - carer who was required to sleep at a disabled person's house (Whittlestone)
 - residential manager in a care home (MacCartney)
 - regulatory requirement for qualified and competent persons present at all times (Esparon)
- Outcome in *Scottbridge Construction Ltd v Wright (2003)* approved
 - night-watchman provided with a mattress and TV for five hours was still treated as working because "suitable facilities" would normally at least mean a proper bed in an area set aside for sleeping.

Record keeping and Evidence

- Reg. 4(2) WTR – measures and records to comply with 48 hour week
- Reg 9 WTR – records adequate to show limits complied with. Therefore need information of other employment and a contractual right to such information. Retain records for two years.
- Reg 59 NMWR – records to show compliance to be retained for three years.

Key elements

- Disclosure ... (written or verbal)
- ... of information ... (not just a concern, allegation or opinion)
- .. which, in the reasonable belief of the worker ... (note: it need not be true) (subjective belief which is objectively reasonable)
- ... tends to show malpractice ... (criminal offence, breach of any legal obligation, danger to health and safety etc.)
- .. the worker reasonably believes that the disclosure is "in the public interest" ... (subjective belief which is objectively reasonable)
- ... and the disclosure is to one of the relevant people listed in the act (e.g. employer / CQC) (Query whether a disclosure to a work colleague is a disclosure to the "employer").

Protection

- Extended definition of “worker” – includes agency workers, some self employed (particularly those in public health), trainees and those on work experience
- Detriment – injury to feelings award calculated using adjusted Vento bands
- Unfair dismissal (for employees, no qualifying service) – note causation issues here – ordinary remedies for unfair dismissal but compensation not capped

Timis and another v Osipov (2018) CA per Underhill LJ

- Claimant was CEO of International Petroleum Ltd dismissed by employer having made a number of protected disclosures
- One non-executive director ordered another to dismiss the claimant
- Claimant claimed unfair dismissal against company and detriment against company and NEDs
- NEDs held personally liable for their part in dismissing claimant
- Company and two NEDs held jointly and severally liable for £1,745,000 compensation

Timis and another v Osipov (2018) CA comment

- That co-workers can be liable is not new (s.47B(1A) ERA)
- But, the detriment provisions do not apply where the act complained of is dismissal of an employee (s.47B(2) ERA)
- What is new is that co-workers can be liable for the detriment of unfair dismissal even where the company cannot be liable under s.47B(2) ERA
- Employers should have detailed whistleblowing policy
- As part of basic training of all employees, there should be training on that policy and the CQC policy
- Managers should be made aware of their potential personal liability

Any questions?

Tax Update for Care Home Operators

Luke Prout CTA, Tax Partner

lprout@streetsweb.co.uk



@Streetsacc



Streets Chartered Accountants



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Items to cover

- Tax relief on capital expenditure
- Structures and disposals of homes
- VAT opportunities
- Sleep-in staff and the NMW
- Budget 2018 updates throughout



Capital expenditure (New build)

Building	Percentage of relief
Warehouse (small office)	10 - 15%
Offices – High end	25 – 30%
Offices – Basic spec	15 – 20%
Factory	20 – 40%
Care homes	35 – 45%



Capital expenditure

Reliefs available

- Fixtures – 18% per annum
- Integral features – 6% per annum (B18)
- Structural Buildings allowances ('SBA's) – 2% (B18)
- Enhanced Capital allowances ('ECA's) – 100% (to 2020 B18)
- Annual investment allowance - £1,000,000 (Jan 2019 – B18)



Annual Investment Allowance (AIA)

- 'AIA' increase to £1,000,000 for 2 years
- From 1st January 2019
- Transitional rules apply
- Year end 31 December 2019
- Review spending decisions
- Defer large projects
- Both P&M and IF
- Not cars



AIA - Example

Year end 30 June 2019

AIA= 6 x 12th's £200k = £100,000

6 x 12ths's £1m = £500,000

Total £600,000 to June 2019

Watch transitional rules - Pre Jan 2019 Max £200,000



Enhanced Capital Allowances (ECAs)

- Abolished from April 2020 (19 years in existence)
- Use them or lose them.
- Accelerate expenditure projects
- In addition to the AIA (100%)
- Energy Saving/beneficial Plant & Machinery
- Published list of products (ETA List)
- Must be brand new
- First year repayable tax credit – 19!
- Opportunity to spec a project and think about tax relief.



Second hand buildings

- CPSE 1 – Pass to your accountant
- Agree with seller (2 years)
- Exemption for non tax payer (Charity)
- Seller needs to pool (pooling requirement)
- Election (s198 CAA 2001 election)
- Potential to loose allowances for ever
- Speak to your accountant (or me!) early doors!

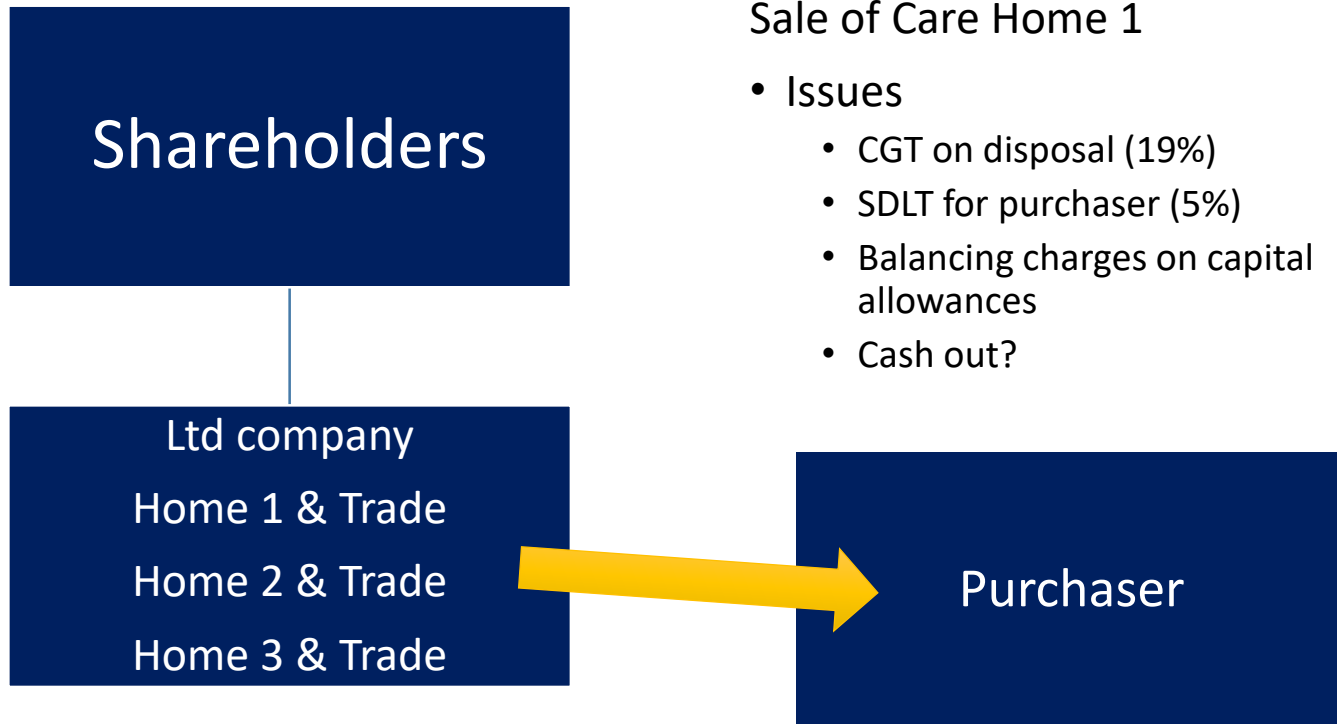




Typical Structure

- Pros
 - Simple to set up
 - Costs to operate
 - Simple
 - Funding
- Cons
 - Expensive to dispose (Tax)
 - Trading risk
 - Asset protection

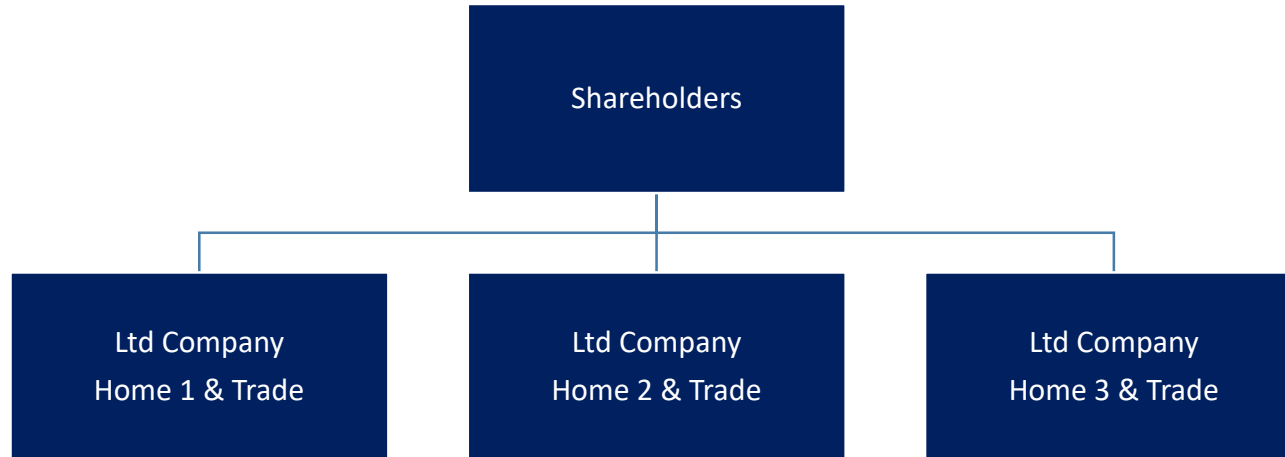




Sale of Care Home 1

- Issues
 - CGT on disposal (19%)
 - SDLT for purchaser (5%)
 - Balancing charges on capital allowances
 - Cash out?





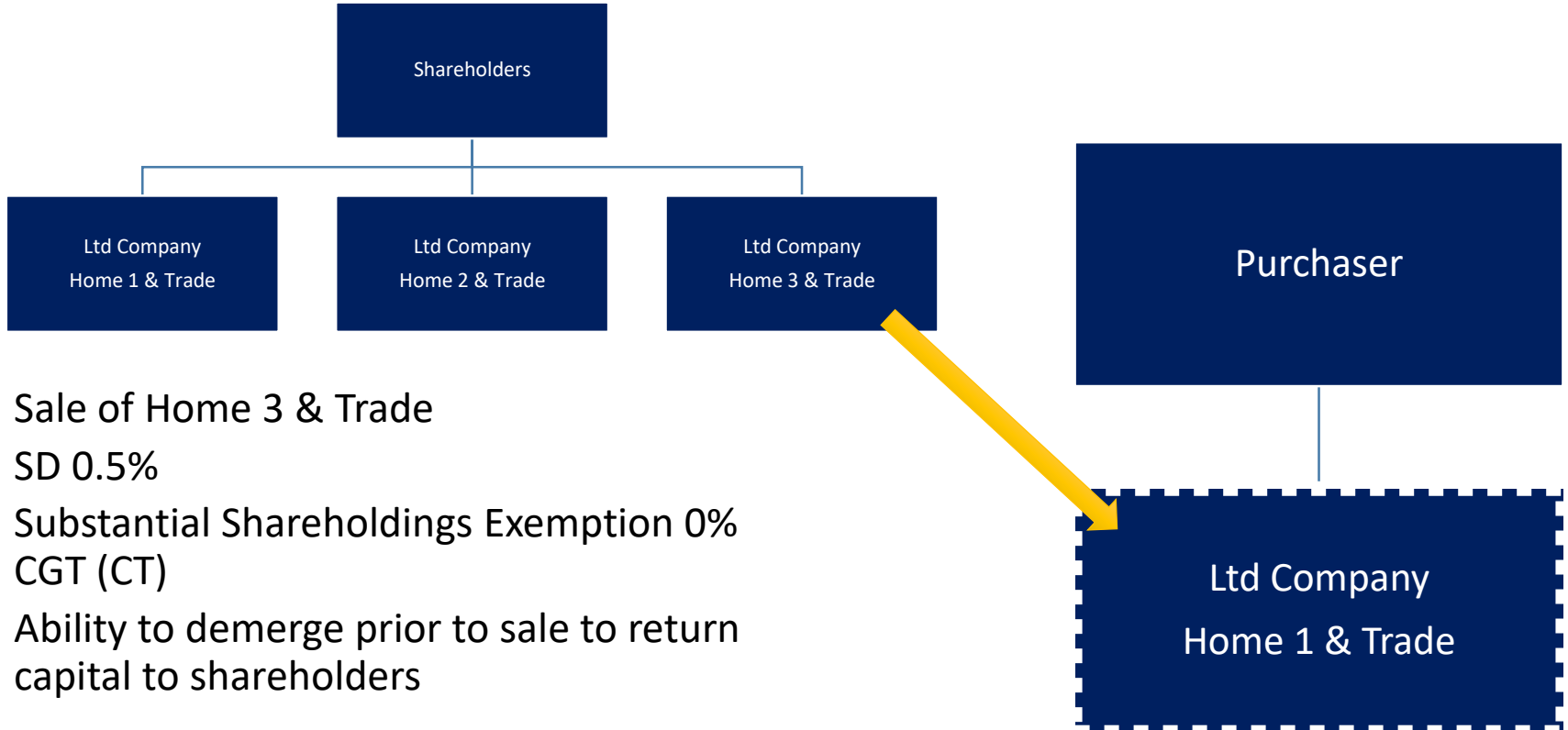
- Pros

- Dispose Tax Free
- Can Demerge
- Asset Protection
- Trading Risk

- Cons

- Cost to set up and maintain





Sale of Home 3 & Trade

SD 0.5%

Substantial Shareholdings Exemption 0%
CGT (CT)

Ability to demerge prior to sale to return
capital to shareholders



Sleep in - NMW

- HMRC until August 2017 assessing employers and back claim calculations.
- Up to 6 years!
- £20-30 per night common practice
- HMRC view – NMW Wage applies on shifts
- Two cases (Mencap & Clifton House Residential care home)
– Mencap continue to pay NMW!
- Employees ‘available for work’ rather than ‘actually working’



Sleep in - NMW

- 'Available for work'
 - Where is the line drawn?
 - Adequate sleeping facilities provided
 - Terms of contract – requirement to check – Intervals?
 - Expected to sleep during shift
 - Woken up for events



Sleep in - NMW

- Consequences
 - Staff morale
 - Staff turnover
 - Change to the law ahead
 - Costs of providing adequate facilities
 - Review contracts and amend for new staff
 - Legal advice required



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